

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ELGRET L. BURDEX,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-19-1089-D
	)	
PHILIP SMITH, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Judge Mitchell recommends the dismissal of this action without prejudice under Fed. R. Civ. P. 41(b) due to Plaintiff’s failure to prosecute his case and failure to comply with prior orders and local court rules.

The case file shows no timely objection to the Report nor request for an extension of time, even though Plaintiff was expressly informed of his right to object, the procedure for doing so, and the consequences of failing to object.<sup>1</sup> Therefore, the Court finds that Plaintiff has waived further review of all issues addressed in the Report. *See Moore v.*

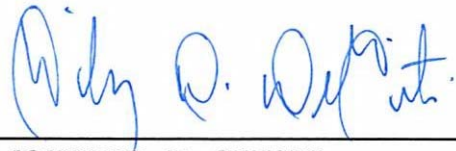
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<sup>1</sup> The case file reflects that the Clerk’s mailing of a copy of the Report to Plaintiff was returned as undeliverable. However, it is Plaintiff’s obligation to provide written notice of a change of address. *See* LCvR5.4(a) (“Papers sent by the court will be deemed delivered if sent to the last known address given to the court.”); *see also Theede v. United States Dep’t of Labor*, 172 F.3d 1262, 1267-68 (10th Cir. 1999) (*pro se* plaintiff who failed to provide a change of address or address correction waived review by failing to make a timely objection).

*United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, for the reasons explained by Judge Mitchell, the Court finds that this action should be dismissed without prejudice to refileing.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 8] is ADOPTED in its entirety. This action is DISMISSED without prejudice to a future filing. A separate judgment of dismissal shall be entered.

**IT IS SO ORDERED** this 7<sup>th</sup> day of February, 2020.



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TIMOTHY D. DeGIUSTI  
Chief United States District Judge